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HUMAN RIGHTS OF INDIGENOUS PEOPLES

Report of the Working Group on Indigenous Populations on its fifteenth session

(Geneva, 28 July-11 August 1997)

Chairperson-Rapporteur: Ms. Erica-Irene A. Daes

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Introduction

Mandate

1. The creation of the Working Group on Indigenous Populations was proposed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in its resolution 2 (XXXIV) of 8 September 1981, endorsed by the Commission on Human Rights in its resolution 1982/19 of 10 March 1982, and authorized by the Economic and Social Council in its resolution 1982/34 of 7 May 1982. In that resolution the Council authorized the Sub-Commission to establish annually a working group to meet in order to:

(a) Review developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous populations, including information requested by the Secretary-General annually from Governments, specialized agencies, regional intergovernmental organizations and non-governmental organizations in consultative status, particularly those of indigenous peoples, to analyse such materials, and to submit its conclusions to the Sub-Commission, bearing in mind in particular the conclusions and recommendations contained in the report of the Special Rapporteur of the Sub-Commission, Mr. José R. Martínez Cobo, entitled "Study of the problem of discrimination against indigenous populations" (E/CN.4/Sub.2/1986/7 and Add.1-4);

(b) Give special attention to the evolution of standards concerning the rights of indigenous populations, taking account of both the similarities and the differences in the situations and aspirations of indigenous populations throughout the world.

2. In addition to the review of developments and the evolution of standards, which are separate items on the Working Group's agenda, the Group has over the years considered a number of other issues relating to indigenous rights. The Commission on Human Rights in its resolution 1997/32 of 11 April 1997 welcomed the proposal of the Working Group to highlight specific themes of the International Decade of the World's Indigenous People. Furthermore, the Commission on Human Rights, in resolution 1997/30 of 11 April 1997, requested the High Commissioner/Centre for Human Rights to invite the Working Group to express its views on the report of the second workshop on a permanent forum for indigenous people and to submit its comments to the Commission at its fifty-fourth session. Finally, in decision 1997/114 of 11 April 1997, the Commission approved the appointment of Ms. Daes as Special Rapporteur on the study on indigenous people and their relationship to land and requested her to submit a preliminary working paper to the Working Group at its fifteenth session. All these questions were included in the provisional agenda prepared by the Secretariat.

I. ORGANIZATION OF THE WORK OF THE SESSION

A. Attendance

3. In its decision 1996/111 of 29 August 1996, the Sub-Commission decided on the following composition of the Working Group at its fifteenth session: Mr. Miguel Alfonso Martínez, Mr. Volodymyr Boutkevitch, Ms. Erica-Irene A. Daes, Mr. El-Hadji Guissé and Mr. Ribot Hatano.

4. The session was attended by Mr. Alfonso Martínez, Mr. Boutkevitch, Ms. Daes, Mr. Guissé and Mr. Hatano.

5. The following States Members of the United Nations were represented by observers: Algeria, Argentina, Australia, Bangladesh, Bolivia, Brazil, Canada, Chile, China, Colombia, Costa Rica, Cuba, Cyprus, Denmark, Ecuador, Estonia, Ethiopia, Finland, France, India, Indonesia, Japan, Kenya, Malaysia, Mauritius, Mexico, Myanmar, Nepal, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Peru, Philippines, Russian Federation, South Africa, Spain, Sri Lanka, Sweden, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America.

6. The following non-member States were represented by observers: Holy See, Switzerland.

7. The following United Nations bodies were represented by observers: Department for Development Support and Management Services, Department of Public Information, Office of the United Nations High Commissioner for Refugees, Sub-Commission on Prevention of Discrimination and Protection of Minorities, UNAIDS, United Nations Environment Programme.

8. The following specialized agencies were represented by observers: International Labour Organization, United Nations Educational, Scientific and Cultural Organization, World Bank, World Health Organization.

9. The following intergovernmental organizations were represented by observers: European Parliament, Pan American Health Organization.

10. The following national institution was also represented by an observer: Commission on Human Rights (Russian Federation).

11. The following non-governmental organizations in consultative status with the Economic and Social Council were represented by observers:

(a) Organizations of indigenous peoples

Aboriginal and Torres Strait Islander Commission, Grand Council of the Crees, Indian Law Resource Centre, International Indian Treaty Council, Inuit Circumpolar Conference, International Organization of Indigenous Resource Development, National Aboriginal and Islander Legal Service Secretariat, Saami Council.

(b) Other organizations

General consultative status

Women's International Democratic Federation, World Wide Fund for Nature International, World Confederation of Labour, World Federation of United Nations Associations.

Special consultative status

Amnesty International, Baha'i International Community, Commission of the Churches on International Affairs of the World Council of Churches, Education International, Friends World Committee for Consultation, International Federation of Human Rights Leagues, International League for the Rights and Liberation of Peoples, International Service for Human Rights, International Work Group for Indigenous Affairs, North South XXI, Pathways to Peace, Society for Threatened Peoples, World University Service.

Roster

International Movement Against All Forms of Discrimination and Racism, Minority Rights Group, Survival International.

12. The following indigenous peoples' organizations and nations, as well as other organizations and groups, were represented at the session and provided information to the Working Group with its consent:

Abya Yala Fund, Adivasi Koordination Germany, Adivasi People, Adivasi Peoples Network Indian Conference of Indian and Tribal Peoples, African Centre for Democracy and Human Rights Studies, Agencia Internacional de Prensa Indígena, Ainu National Congress, Ainu Association of Hokkaido, Ainu Association of Reta, Ainu Association of Sapporo, Alianza del Clima, Alianza Mundial de Pueblos Indigenas de Bosques Tropicales, Altepetl Nahwas de la Montaña de Guerrero, Ambedkar Centre for Justice and Peace, American Friends Service Committee Pacific Program, American Indian Law Alliance, Arctic Council Indigenous Peoples' Secretariat, Asamblea Nacional Indígena Plural por la Autonomía, Asamblea Permanente de los Derechos Humanos de Bolivia, Asia Indigenous Peoples Pact, Asociación de Artistas Quilichao, Asociación de Desarrollo Comunal Indígena Nahuat - Sonsonate, El Salvador, Asociación Indígena de la República Argentina, Asociación Interétnica de Desarrollo de la Selva Peruana, Asociación Tohil Morales de los Niños Mayas de Guatemala, Assochesa People Nord, Association de soutien aux nations Amérindiennes, Association des femmes réfugiées de l'Azawadau Burkina Faso, Association for the Promotion of Batwa, Association for the Promotion and Redemption of Indigenous Cultures, Association info soutien aux indiens d'Amérique, Association of Norfolk Islanders, Association pour le développement global des Batwa du Rwanda, Aynu Associates, Big Mountain Action Group, Black Lake Denesutine First Nation, Bhoomi Sena, Boro Women Justice Forum, Borok People Human Rights Organisation, Budakattu Krishikara Sangha, Burma Peace Foundation, Cactus Valley/Redwillow Spring Sovereign Communities, Camtchadal, Canadian Friends Service Committee, Canadian Indigenous Womens Resource Institute, Cape Khoisan Cultural Heritage Development Council of South Africa, Centre for Indigenous Resources, Centre for Progress of Manipuri People, Centre for the Promotion of Human Rights and Protection of Nature, Centro Cultural Folklórico, Flor de Lirio, Argentina, Children Forum 21, Childrens Rights Research Project, Chime Gatsal Ling, Chin Nation Council, Chittagong Hill Tracts Students Council, Chukchi Council of Elders, Chukchi People of Pevek, Comisión de Asuntos Indígenas, Comisión de Asuntos Indígenas del Gobierno del Estado de Michoacán, Comisión Jurídica de los Pueblos de Integración Tahantinsuyana, Comisión Jurídica para el Autodesarrollo de los Pueblos Originarios Andinos "CAPAJ", Comité

Belge-Amérique indienne, Comité de solidarité avec les Chiapas, Comité d'Etat pour les peuples indigènes du nord, Fédération de Russie, Comité intertribal, Comité social des Chagossiens, Committee on Human Rights, Communauté des autochtones rwandais, Community Arts Society of Norfolk Island, Communidad Indígena Amaicha del Valle Tucumán - Argentina, Conaie - Ecuador, Confederación de Pueblos Autóchtonos de Honduras, Confederated Salish and Kootenai Tribes of the Flathead Nation, Confederación Indígena Tayrona, Congrès mondial Amazigh, Congreso Nacional Indígena, Conseil indigène en Hollande, Consejo Aguaruna y Huambisa, Consejo de Apoyo al Consejo Indio de Sudamérica, Consejo de Todas las Tierras, Consejo Inter-Regional Mapuche, Conselho Indigena Tremembe, Consultative Committee of Finno-Ugric Peoples, Coordinación de Organizaciones del Peublo Maya de Guatemela, Coordination des peuples autochtones d'Amérique centrale et du sud, Coordination des peuples d'Amérique centrale et du sud Picsa, Coordinadora de Organizaciones Indígenas de la Cuenca Amazónica, Coordinadora Nacional de Comunidades Campesinas Indígenas del Perú, Cordillera Peoples Alliance, Corporación Nacional de Desarrollo Indígena, Cultural Survival Canada, Deh Cho First Nations, Dupoto-E-Maa, Eastern Cherokee, Empire Washitaw de Dugdahmoundyah, Ethnic Minority Rights Organization of Africa, European Alliance with Indigenous People, Evenk, FAIRA, Fédération des organisations amérídiennes de Guyane, First Peoples of the Kalahari, Folil-Che Aflaihi - Nacion Mapuche, Foundation for Aboriginal and Islander Research Action, Fonds mondial pour la sauvegarde des cultures autochtones, Fundación internacional Lelio Basso por el derecho y la liberación de los pueblos, Gran Fraternidad Universal, Griqua National Conference of South Africa, Hadza Peoples, Haudenosaunee Nation, Helmen, Homeland Mission 1950 Maluku, Human Rights International, Incomindios, Indian Confederation of Indigenous and Tribal Peoples, Indigenous Knowledge Programme, Indigenous Women Aboriginal Corporation, Indigenous Women's Network, Innu Council of Nitassinan, Insaf, Inter Mountain Peoples Education and Culture in Thailand Association, Inti, Institute for Ecology and Action Anthropology, Jumma People, Chittagong Hill Tracts, Jumma Peoples Network, Kinnapa Development Programme, Kingdom of Hawai'i Nation, Kirat Koyu Rais' Uplifting Association, Koordinatoriu of Sibirie, Kuru Development Trust, Lakota Nation "Hunkpapa" Human Rights, Lakota National Aim, Lao Human Rights Council Inc., L'auravetl'an Foundation, Leonard Peltier Defense Committee, Lubicon Cree/Dene Nation, Lumad Mindanao Peoples Federation, Maa Development Association Kenya, Manab Adhikar Sangram Samiti, India, Manitoba Métis Federation, Mapuche International Link, Mohawk Nation, Montagnard Foundation Inc., Mouvement culturel Berbere, Movement for the Survival of the Ogoni People - MOSOP, Movimiento Indio Tupaj Amaru, Movimiento Indio Tupak Katari-1, Movimiento Revolucionario Tupaj Katari de Liberación, Naga Peoples Movement for Human Rights, Naga Vigil Human Rights Group, National Committee to Defend Black Rights Aboriginal Corporation, National Socialist Council of Nagaland, Nenetz, Nepal Federation of Nationalities, New South Wales Aboriginal Land Council, Ngaiterangi Iwi Incorporated Society, Nitassinan Csia, Nuba Moutain Solidarity Abroad, Oglala Lakota Nation, Ojibway Nation, Organización Amaro Runa, Organización Mapuche Legun Lugan, Organización Nacional Indígena de Colombia, Organization for Survival of Illaikipiak Maasai, Parlamento Aymara y Cidsa Pueblo Indio, Parlamento Indígena Americano, Paul First Nation Alberta Canada, Peabody Watch Arizona, Prince Albert Grand Council, Pueblo Pehuenche - Red Internacional de Apoyo, Rehoboth Community of Namibia, Relmu Mapuche Chile, Revolutionary Committee Movements (RCM), Revolutionary Peoples Front, Roseau River Anishinabe First Nation, Saddle Lake Cree Nation, Sagkeeng First

Nation, Schichting Cabinda Irij, Shimin Gaikou Centre, Shorsk, South East Treaty Four Tribal Council, Southern Kalahari San Association, Sovet Itelmens Kamchatka, Survie Touaregue Temoust, Teton Sioux Nation Treaty Council, Tibetan Centre for Human Rights and Democracy, Tibetan Women's Association, Tibetan Youth Congress, Traditions pour demain, Tripura People's Democratic Front, Tuscarura Nation, Unión de Comunidades Indígenas Wixarikas de Jalisca México, United Liberation Front of Assam, United National Liberation Front of Manipur, Urbanized Indigenous of the Muscogee Creek, Watu Acción Indígena, West Papua Peoples' Front, Working Group of Indigenous Minorities in Southern Africa, !Xu Khwe Association, Zemamahuatl.

13. In addition to the above-mentioned participants, 42 individual scholars, human rights experts, human rights defenders and observers attended the meetings. A total of 887 persons attended the fifteenth session of the Working Group.

B. Documentation

14. The following documents were prepared for the fifteenth session of the Working Group:

Provisional agenda (E/CN.4/Sub.2/AC.4/1997/1);

Annotations to the provisional agenda (E/CN.4/Sub.2/AC.4/1997/1/Add.1);

Supplementary working paper by the Chairperson-Rapporteur, Ms. Erica-Irene A. Daes, on the concept of "indigenous people" (E/CN.4/Sub.2/AC.4/1997/2);

Note by the Secretariat on information received from indigenous peoples and non-governmental organizations (E/CN.4/Sub.2/AC.4/1997/3/Add.1);

Note by the Secretariat on health and indigenous peoples (E/CN.4/Sub.2/AC.4/1997/4);

Note by the Secretariat on the International Decade of the World's Indigenous People: Voluntary Fund for the International Decade of the World's Indigenous People (E/CN.4/Sub.2/AC.4/1997/5);

Draft report of the Second Workshop held in accordance with Commission on Human Rights resolution 1997/30 (Santiago, 30 June-2 July 1997) (E/CN.4/Sub.2/AC.4/1997/CRP.1);

Preliminary working paper on indigenous people and their relationship to land submitted by the Australian delegation (E/CN.4/Sub.2/AC.4/1997/CRP.2);

Preliminary working paper on Indigenous people and their relationship to land prepared by Ms. Erica-Irene Daes, Special Rapporteur (E/CN.4/Sub.2/1997/17 and Corr.1).

15. The following background documents were made available to the Working Group:

Report of the Working Group on Indigenous Populations on its fourteenth session (E/CN.4/Sub.2/1996/21 and Corr.1);

Supplementary report of the Special Rapporteur, Ms. Erica-Irene A. Daes, on protection of the heritage of indigenous people (E/CN.4/Sub.2/1996/22);

Third progress report submitted by Mr. Miguel Alfonso Martínez, Special Rapporteur on the study on treaties, agreements and other constructive arrangements between States and indigenous populations (E/CN.4/Sub.2/1996/23);

Report of the Secretary-General on activities undertaken and information received in pursuance of Commission resolution 1996/41 on a permanent forum for indigenous people in the United Nations system (E/CN.4/1997/100);

Report of the High Commissioner for Human Rights and the Coordinator of the Decade (E/CN.4/1997/101).

Report of the working group established in accordance with Commission on Human Rights resolution 1995/32 (E/CN.4/1997/102);

Draft declaration on the rights of indigenous peoples as agreed upon by the members of the Working Group at its eleventh session (E/CN.4/Sub.2/1994/2/Add.1);

Commission on Human Rights resolution 1995/32 on the establishment of a working group to elaborate a draft declaration in accordance with paragraph 5 of General Assembly resolution 49/214 of 23 December 1994;

Commission on Human Rights resolution 1997/30 on a permanent forum for indigenous people in the United Nations system;

Commission on Human Rights resolution 1997/31 on the working group to elaborate a draft declaration in accordance with paragraph 5 of General Assembly resolution 49/214 of 23 December 1994;

Commission on Human Rights resolution 1997/32 on the Working Group on Indigenous Populations of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the International Decade of the World's Indigenous People;

Commission on Human Rights decision 1997/112 on the protection of the heritage of indigenous people;

Commission on Human Rights decision 1997/113 on the study on treaties, agreements and other constructive arrangements between States and indigenous populations;

Report of the Board of Trustees of the Voluntary Fund for Indigenous Populations on its tenth session (UNVFIP/BT/1997/7);

Report of the Advisory Group of the Voluntary Fund for the International Decade of the World's Indigenous People on its second session (VFIP/AG/1997/12).

C. Adoption of the agenda

16. The Working Group held nine public meetings during its fifteenth session, of which three were extended.

17. At its 1st meeting, the Working Group considered the provisional agenda (E/CN.4/Sub.2/AC.4/1997/1). Mr. Guissé proposed that the title of agenda item 5 (a) should be changed to "Environment, land and sustainable development". Mr. Alfonso Martínez proposed that the title of agenda item 6 should be changed to "Consideration of the third progress report and the final report of the Special Rapporteur of the Sub-Commission on treaties, agreements and other constructive arrangements between States and indigenous populations". Agenda items 5 (a) and 6 were amended accordingly, and the provisional agenda was adopted unanimously.

D. Opening of the session

18. A representative of the Office of the High Commissioner for Human Rights opened the fifteenth session of the Working Group on Indigenous Populations. He provided the Working Group with information about the progress made since the last session on indigenous issues within the United Nations human rights programme, notably the second workshop on a permanent forum for indigenous people in the United Nations system, which was held in Santiago from 30 June to 2 July 1997. The Secretary-General had appointed the following individuals as members of the Board of Trustees of the Voluntary Fund for Indigenous Populations for three-year terms. Ms. Tove Sövndahl Petersen (Denmark/Greenland), Mr. Ole Ntimama (Kenya), Ms. Victoria Tauli-Copuz (Philippines), Ms. Nina Pacari (Ecuador) and Mr. Michael Dodson (Australia). Concerning the High Commissioner/Centre for Human Rights Indigenous Fellowship Programme, running from 1 July to 31 December 1997, four indigenous persons from Brazil, India, Japan and the Russian Federation had been invited to spend six months at the High Commissioner/Centre for Human Rights to receive human rights training and gain practical experience. The open-ended inter-sessional working group of the Commission on Human Rights on the draft United Nations declaration on the rights of indigenous peoples had held its second session in October 1996.

19. In her opening statement the Chairperson-Rapporteur, Ms. Erica-Irene A. Daes, paid tribute to the memory of all the indigenous persons who had lost their lives struggling for freedom, independence, and protection of their national and cultural identity. She also paid tribute to the indigenous peoples and non-governmental organizations that had initiated the first International NGO Conference on Indigenous Peoples in the Americas which took place at the Palais des Nations in September 1977. She gave an overview of the developments that had taken place with regard to the protection of indigenous rights and the solutions of problems concerning

indigenous peoples since that Conference. The establishment of the Working Group on Indigenous Populations in 1992, today one of the largest human rights meetings on the international calendar, must be regarded as one of the great achievements in that regard.

20. Focusing on the achievements of the Working Group, the Chairperson-Rapporteur identified the draft United Nations declaration on the rights of indigenous peoples and the three studies on treaties, cultural heritage and indigenous land rights as being of vital importance for indigenous peoples and Governments. She expressed satisfaction with the growing involvement of indigenous people within the United Nations system, including at high-level conferences such as the World Conference on Human Rights, the United Nations Conference on Population and Development, the Fourth World Conference on Women and the World Summit for Social Development. The voices of indigenous peoples were now being heard, directly or indirectly, at every level of the United Nations system, and indigenous peoples are listened to with respect and greater understanding than 20 years ago.

21. The proclamation by the General Assembly of the International Year (1993) and the International Decade of the World's Indigenous People (1995-2004), with the full and free participation of indigenous peoples, was being of great importance in the promotion and protection of indigenous rights. The two voluntary funds were also major achievements: the Voluntary Fund on Indigenous Populations, with the mandate to assist indigenous people with their travel to the Working Group on Indigenous Populations and the working group of the Commission on Human Rights on the draft declaration, and the Voluntary Fund for the International Decade of the World's Indigenous People, with the mandate to assist in the promotion and implementation of indigenous projects and programmes during the Decade. She expressed gratitude to the Governments, non-governmental organizations and individuals who had contributed to the voluntary funds.

22. Finally, the Chairperson-Rapporteur addressed the establishment of a permanent forum for indigenous people within the United Nations system. There had been substantial progress on this matter since the World Conference on Human Rights first recommended in 1993 that consideration be given to the establishment of a permanent forum. The international community had recognized that indigenous peoples needed a permanent institutional mechanism which allowed them to participate fully in the work of the United Nations, in particular with respect to such matters as development, and to contribute effectively to the consideration of issues related to standard-setting activities of indigenous peoples.

II. STANDARD-SETTING ACTIVITIES: EVOLUTION OF STANDARDS CONCERNING THE RIGHTS OF INDIGENOUS PEOPLES

23. At its fourteenth session, the Working Group on Indigenous Populations decided to recommend to the Sub-Commission that it transmit Ms. Daes' working paper on the concept of "indigenous peoples" (E/CN.4/Sub.2/AC.4/1996/2) to Governments, intergovernmental organizations and indigenous peoples requesting their comments, and to request the Chairperson-Rapporteur to prepare a supplementary working paper on the basis of the information received for submission to the Working Group at its fifteenth session. Furthermore, the

Working Group decided at its fourteenth session to continue its consideration of the concept of "indigenous peoples" at its fifteenth session under the agenda item on standard-setting.

24. In its resolution 1996/31, the Sub-Commission expressed its appreciation to the Chairperson-Rapporteur for her working paper and approved the above-mentioned recommendation by the Working Group. The recommendation was also approved by the Commission on Human Rights in its resolution 1997/32. In introducing the agenda item on standard-setting activities at the fifteenth session of the Working Group, the Chairperson-Rapporteur presented her supplementary working paper (E/CN.4/Sub.2/AC.4/1997/2).

25. Ms. Daes gave a brief overview of the supplementary working paper and told the Working Group that she had not received any further information or comments during the last 12 months. Her position was unchanged with regard to a definition of "indigenous peoples": no single definition could capture the diversity of indigenous peoples worldwide, and it was not desirable or possible to arrive at a universal definition at the present time.

26. The observer for Switzerland underlined the importance of improving the existing minimum standards pertaining to indigenous rights. With regard to the concept of "indigenous peoples", it was necessary to have a pragmatic approach; self-identification was therefore better than a sterile and formal discussion on a definition.

27. The observer for Finland congratulated and thanked the Chairperson-Rapporteur and endorsed her conclusions. He agreed that there should not be a single legal definition of indigenous peoples at the international level at this time, although a definition might be required at the national level. There was no formal definition of "minorities" or "peoples" in international law, and indigenous rights therefore also could be implemented without a formal universal definition of "indigenous peoples". Furthermore, the working definition of indigenous peoples contained in the Martínez Cobo report, including elements such as self-identification and acceptance by the group, was sufficient to identify who constituted an indigenous people.

28. The observer for Bangladesh stated that the position of his Government remained unchanged with regard to the definition of indigenous people. A definition was needed in order to provide the necessary focus required for standard setting. However, the diversity was so wide that a restrictive definition should not be attempted. Consideration should be given to replacing the term "indigenous" with another term which could be defined more effectively.

29. Many indigenous participants expressed their full support for the conclusions contained in the Chairperson-Rapporteur's supplementary working paper and reiterated that it was neither desirable nor necessary to arrive at a universal definition of indigenous peoples. Some indigenous representatives noted that neither the term "peoples" nor the term "minorities" had been defined in international law. Thus, indigenous rights could also be implemented without a clear definition. It would be discriminatory if "indigenous peoples" alone needed to be defined. Some indigenous

representatives also said that the criteria in the Martínez Cobo report were adequate to determine whether a person or community was indigenous or not. One participant referred to the concept of indigenous as defined in International Labour Convention No. 169.

30. Some indigenous participants also said that indigenous peoples, as distinct peoples, had rights to the term "peoples" as well as to self-determination. Moreover, it was not for Governments to determine who constituted a nation or a people, but for the peoples themselves to decide. The right of self-identification was identified by many indigenous representatives as being crucial.

31. An indigenous participant from Asia said that there were many different groups of indigenous peoples in Nepal, but that they were known as "nationalities" in the Nepalese context.

32. An indigenous participant from North America informed the Working Group that the Inter-American Commission on Human Rights of the Organization of American States had completed its preparation of a proposed inter-American declaration on the rights of indigenous peoples. On 5 June 1997, the OAS General Assembly adopted a resolution which instructed the Permanent Council to study the proposed draft declaration. The resolution provided for State observations and recommendations to be transmitted by 31 December 1997. That will be followed by a review by the Inter-American Juridical Committee and the Inter-American Indian Institute. Finally, the resolution instructed the Permanent Council to convene a meeting of government experts in the field with a view to the possible adoption of the proposed declaration at the twenty-eighth session of the OAS which will take place in June 1998.

33. Mr. Alfonso Martínez expressed the view that it was not useful to define indigenous peoples, and that it was possible to have a United Nations declaration on the rights of indigenous peoples without a definition. In his view it would be totally misleading to use the term "indigenous peoples" in the context of practically all nations in Asia and Africa. He referred to his views on this issue as contained in his second progress report on the study on treaties (E/CN.4/Sub.2/1995/27). Finally, he mentioned the potential danger of the extensive use of the word "indigenous" for the present and future work of the Working Group.

34. Mr. Guissé said that although it was not possible to define indigenous peoples at the present stage, it would be useful to discuss the matter further. The aim of the future debate should not be to arrive at a definition of indigenous peoples in the classical sense, but to arrive at a legal and social framework which could be used as a reference, and to harmonize action and protect the rights of indigenous peoples. He also noted that the concepts of "people" and "peoples" had different meanings depending on the time and place being referred to.

35. Mr. Hatano said that he was not fully convinced that a definition of indigenous peoples was not required. However, he agreed with the view expressed by Ms. Daes that it was nearly impossible and not desirable to have a universal definition at this stage, although it might be necessary to define "indigenous peoples" within the next 30 years. The declaration on the rights

of indigenous peoples could and should be adopted by the General Assembly without having a definition of indigenous peoples. However, a definition would be necessary if the declaration was later incorporated into legally binding treaties.

III. REVIEW OF DEVELOPMENTS PERTAINING TO THE PROMOTION AND PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF INDIGENOUS PEOPLES

A. General

36. In opening agenda item 5, the Chairperson-Rapporteur invited all participants to provide information concerning recent developments pertaining to indigenous peoples and indigenous issues in their countries. She recalled that the Working Group last year had decided to highlight the theme "environment, land and sustainable development" at its fifteenth session. The main purpose of highlighting themes was to provide updated information and data on specific topics. Environment and land were vital concerns for all indigenous peoples and Governments.

37. The Commission on Human Rights, in its decision 1997/114, had approved the appointment of Ms. Daes as Special Rapporteur on indigenous people and their relationship to land, and requested her to prepare a preliminary working paper on the subject. The appointment had been endorsed by the Economic and Social Council at its last session. The working paper (E/CN.4/Sub.2/1997/17 and Corr.1) would be presented to the Working Group under the relevant sub-item. The Working Group had decided to continue its work on "indigenous peoples and health" at its fifteenth session, which was also a sub-item under the present agenda item.

38. The Chairperson-Rapporteur reminded all participants that the Working Group was not a chamber of complaints, and encouraged indigenous participants to avoid making any accusations against Governments.

39. Mr. Hatano said that, unfortunately, many non-governmental organizations reported only negative aspects of this agenda item. He concurred that the Working Group was not a forum for complaints and that criticisms of Governments should be made at the Sub-Commission under the relevant agenda items.

40. The Observer for Canada acknowledged that although there had been progress on a number of fronts, many challenges and issues continued to face the Government and the indigenous peoples in Canada. However, the Government was determined to continue to work together with indigenous peoples to make further progress on indigenous self-government and related issues. The observer described the major commitments that the Canadian Government had made to indigenous peoples of Canada and the ongoing negotiations between the Government and more than half of Canada's First Nations and Inuit communities concerning the implementation of indigenous self-government. Since 1996, several agreements had been signed with various indigenous groups including: a final agreement on education with the Mi'kmaq bands in Nova Scotia; a framework agreement with Treaty 3 Chiefs on governance issues across the treaty area; a sub-agreement on education with the Alberta Summit Chiefs;

and over 20 framework agreements with indigenous groups in British Columbia. Moreover, two self-government agreements were in place with Yukon First Nations, bringing the total of such agreements to six in that region of Canada.

41. The observer for Canada also said that Canada's policy on the inherent right of indigenous self-government included negotiation processes with Métis and off-reserve indigenous peoples. There were at present agreements for 10 such processes in 7 provinces across the country. These agreements were tripartite, involving the indigenous organizations, the respective provincial governments and the federal Government. The negotiations provided a forum for the two levels of government to work cooperatively with indigenous organizations to enhance the control and influence of indigenous peoples over issues and decisions that affected their lives.

42. The observer for the United States of America said that, inter alia, his Government maintained a government-to-government relationship with federally recognized tribes that had existed since the establishment of the United States. The Working Group was informed about the establishment of the Arctic Council, which is a high-level forum with the eight Arctic States (Canada, Denmark, Finland, Iceland, Norway, the Russian Federation, Sweden and the United States) as members and with three Arctic indigenous organizations as permanent participants. The Arctic Council provided a means for promoting cooperation, coordination and interaction among the eight Arctic States, with the active participation of Arctic indigenous groups. Furthermore, the Council addressed on a regional basis issues of sustainable development and environment protection which were matters of particular concern to indigenous peoples.

43. The observer for Sri Lanka informed the Working Group of the decisions taken by the President of Sri Lanka pertaining to the Veddha community and their needs and traditional practices. The Government had accepted the principle that the Veddha community (Wanniyala Aetto) should be allowed the freedom to hunt and worship within their traditional hunting grounds and those carrying identity cards issued by the appropriate authorities would not be fined for carrying out those activities; the Government had issued the appropriate instructions to the Wildlife Department and other relevant authorities. Those decisions had been brought to the notice of the Veddha community and the President was expected to meet with the representatives of the Wanniyala Aetto shortly to discuss the possibility of arriving at a mutually acceptable long-term solution to their grievances.

44. The observer for Australia, said that indigenous people in Australia were generally poorer than the rest of the community. Overall, their standards of health and living conditions were unacceptably low. The Government had promised greater autonomy for the people of the Torres Strait and, as a first step, had passed legislation giving the Torres Strait Regional Authority a separate budget allocation from the Aboriginal and Torres Strait Islander Commission. By the end of the year 2000 the Torres Strait people were expected to determine their own priorities. The Government had significantly increased funding for indigenous-specific programmes over the next four years: it planned to spend some $420 million more on indigenous people than in the last four years. The observer also

highlighted the importance of the Australian reconciliation process, whose aim was justice and equity for all. The Working Group was also told about the special ministerial summit on aboriginal deaths in custody and the high Aboriginal and Torres Strait Islander incarceration rates, which was held in July 1997.

45. The observer for Australia also informed the Working Group about the Human Rights and Equal Opportunity Commission's National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their families which was tabled in the National Parliament in May 1997. The only aspect of the report on which the Government had indicated its position was the question of cash compensation: the Government did not believe that such compensation was an appropriate response.

46. The observer for New Zealand informed the Working Group about recent changes in the electoral system in New Zealand, and said that those changes had led to a significant increase in Maori representation. Special provision was made in the Electoral Act for Maori representation in Parliament. Maori have the option to enrol on either the Maori electoral roll or the general roll. Maori voters on the Maori roll elect representatives for Maori constituencies in Parliament. Under the new proportional representation system, the number of Maori seats in Parliament could vary depending on the number of Maori who chose to register on the Maori electoral roll. Maori made up about 13 per cent of the population and now a similar proportion of the seats in Parliament were held by Maori people, which was a notable development for Maori and for the democratic process in New Zealand. Of the 120 members of Parliament 15 were Maori; 5 of these MPs represented Maori constituencies, while the other 10 were elected either from general constituencies or as Party representatives. The new Government in New Zealand contains three Maori Cabinet Ministers, including the Deputy Prime Minister and Treasurer, the Associate Treasurer and the Minister of Maori Affairs.

47. The observer for New Zealand acknowledged that the Treaty of Waitangi was fundamental to the relationship between the Crown and the Maori, and said that the Government would continue to work towards its goals of achieving social and economic parity between Maori and non-Maori, and reaching fair and durable settlements for proven breaches of the Treaty.

48. The observer for Finland informed the Working Group about amendments to the Finnish legislation and Constitution whereby the Sami people was granted cultural autonomy in matters concerning the Sami language and culture within the Sami Homeland region. The Sami Parliament, the highest political body of the indigenous Sami people, had the responsibility to implement the autonomy arrangement.

49. The observer for the International Labour Organization (ILO) stated that the ILO was responsible for the only two conventions so far adopted concerning indigenous and tribal peoples: Convention No. 107 of 1957 concerning Indigenous and Tribal Populations, and Convention No. 169 of 1989 concerning Indigenous and Tribal Peoples. Convention No. 107 remained in force for 21 countries, while Convention No. 169 was also in force and so far had been ratified by 10 countries. However, he said that the practical influence of the ILO conventions, in particular Convention No. 169, went beyond the number

of ratifications. The Working Group was informed about the annual inter-agency consultations on indigenous peoples, aiming to coordinate technical work among United Nations agencies and organizations in this field. This year's meeting was convened by the ILO and focused on consultation and participation with indigenous and tribal peoples. The observer also informed the Working Group about a radio programme, developed by the ILO in cooperation with indigenous organizations in Costa Rica, explaining the objectives and scope of ILO Convention No. 169.

50. Many indigenous participants reported on oppression and denial of their rights to self-determination. Many indigenous participants also reported on the displacement of their communities from their lands as a result of development projects. Several indigenous participants reported on situations of assimilation. However, some indigenous participants informed the Working Group about progress made with regard to their situation and rights.

51. Many indigenous participants reported that the educational systems in their countries did not recognize or promote indigenous identities. Educational curricula should reflect the histories, cultures and traditions of indigenous peoples.

52. Some indigenous participants identified economic difficulties and poverty as critical issues. There was high indigenous unemployment in urban areas. Other indigenous participants spoke of the need to restore the human, social, cultural, civil and political systems of indigenous peoples.

53. A number of indigenous participants referred to specific violations of human rights in their countries. A member of the Twa people of Rwanda condemned the massacres in his region of which his people had been victims and urged a full inquiry without delay.

54. A representative of the Naga people informed the Working Group about the latest developments that had taken place between the Nagas and the Government of India. The Government and the National Socialist Council of Nagaland had announced a cease-fire with effect from 1 August 1997 and agreed on the following terms for the start of talks: (a) the talks shall be without conditions from both sides; (b) the talks shall be at the highest level, that is, at the level of the Prime Minister; and (c) the venue of the talks shall be anywhere outside India.

B. Environment, land and sustainable development

55. The Chairperson-Rapporteur of the Working Group, in her capacity as the Special Rapporteur on the study on indigenous people and their relationship to land, presented her preliminary working paper on indigenous people and their relationship to land (E/CN.4/Sub.2/1997/17 and Corr.1). She reiterated the importance of recognizing and securing indigenous land rights, and the need for continued dialogue between Governments and indigenous peoples on land rights matters. She also stressed that indigenous peoples had a very close relationship with their lands, territories and resources, and that this should always be kept in mind when discussing indigenous land rights. She expressed satisfaction with the fact that this special relationship was gradually being recognized by States and international organizations.

56. The working paper reviewed contemporary problems faced by indigenous people with regard to land and natural resources. Many States still failed to acknowledge the rights of indigenous peoples to their lands and natural resources. The working paper was a preliminary review only, addressing some of the key elements pertaining to indigenous land rights; the Special Rapporteur would present a final report during the coming year.

57. The observer for Brazil said that in recognition of the fundamental importance of land and environment for indigenous peoples, the Brazilian Constitution acknowledged indigenous peoples' "original rights" to lands they traditionally occupied. Those lands were intended for their permanent possession and they would have exclusive usufruct of the resources, the soil, the rivers and the lakes. Brazil recognized that land and environment were essential for ensuring healthy living conditions and for the sustainable development of indigenous peoples. Those elements constituted the bases for the physical and cultural survival of indigenous peoples as ethnically differentiated groups within the national society. The Brazilian Government was firmly committed to pursuing its constitutional obligations to protect indigenous people against acts of violence and to demarcate their lands. Those lands represented 11 per cent of the national territory - the equivalent of France and England together. The new administrative procedure for demarcation of indigenous lands was introduced by Decree No. 1775 of 8 January 1996 and allowed any claimant to provide evidence to sustain his or her claim pertaining to demarcated indigenous land. Pursuant to the relevant provisions, the Minister of Justice had examined 368 non-indigenous claims of objections regarding 26 indigenous areas. Altogether, 353 claims had been rejected, while the others had been sent to the National Foundation for Indigenous Affairs for further study.

58. The observer for Denmark expressed the view that it was essential that Governments, non-governmental organizations and intergovernmental organizations reaffirmed their commitment to the principles of sustainable use of natural resources, allowing indigenous peoples dependent on hunting, fishing and gathering to continue to develop their traditional subsistence activities regardless of whether they were conducted on land or sea.

59. The observer for Australia referred to the December 1996 decision by the High Court of Australia in the Wik case. The Court found that the grant of particular pastoral leases in the State of Queensland did not necessarily extinguish any native title and that the effect on any native title of granting a pastoral lease must be determined on a case-by-case basis. The decision's complex interaction with legislation, including the Native Title Act and the Racial Discrimination Act, had produced major difficulties and uncertainties for state and territory land administration, pastoralists, mining interests, other leaseholders and potential native title holders. He said that after intensive consultation with all parties, including indigenous interests, the Government had released draft legislation in response to the Wik decision for comment. He said the draft legislation was based on the non-extinguishment of native title of pastoral leases and met the legitimate needs of pastoralists while respecting native title.

60. The observer for Australia presented comments on the paragraphs of the preliminary working paper dealing with his country.

61. The observer for Finland said that the new legislation on Sami cultural autonomy did not include provisions pertaining to land rights, and that the current Finnish legislation did not acknowledge Sami land rights. The observer for Norway said that the Norwegian Sami Rights Commission, appointed in 1980 to examine the Sami people's land and water rights, had concluded its work with regard to the county of Finnmark. The Commission would now continue its study in other areas in Norway. She also informed the Working Group about the ongoing study on Sami customary law pertaining to land rights. The Norwegian Government would not allow any more environmental encroachments in Sami areas before the issue concerning Sami land rights was settled.

62. The observer for Malaysia said that the indigenous Bumiputras are much behind the non-indigenous in terms of economic well-being, and that the Government had therefore embarked on new initiatives to accelerate their socio-economic development, including the formulation of policies to ensure better legal protection of Orang Asli land.

63. Many indigenous participants congratulated and thanked the Special Rapporteur for her working paper and said that land and natural resources were the most fundamental concern of indigenous peoples around the world. Besides the question of self-determination, the access to land and control over it and its resources were central. Indigenous peoples depended on land for their material and cultural survival. Some indigenous participants said that in order to survive, indigenous peoples and their communities needed to be able to own, use, conserve and manage their land and natural resources.

64. Many indigenous participants reported to the Working Group that their rights to land and natural resources were not recognized. The fundamental underlying intent of national legislation was the dispossession of indigenous peoples' lands, territories and natural resources. Many indigenous representatives referred to the principle of terra nullius, which had been used to justify the negation of indigenous land claims.

65. Some indigenous participants focused on the issue of displacement and forced relocation of indigenous peoples from their native lands. This had became a global phenomenon in the recent past, and displacement and forced relocation of indigenous peoples coupled with inadequate rehabilitation had triggered a chain of other forms of displacement.

66. An indigenous participant from North America said that in regard to land, environment and development in the United States and South America, exploitation of indigenous peoples' resources, in particular gold mining, was the same as it was 100 or 200 years ago. The threats to indigenous peoples remained the same. Such development brought tides of settlers which threatened the peace and security as well as the health and welfare of indigenous communities. Moreover, the degradation of the environment continued to be a critical problem for indigenous peoples in the Americas.

67. An indigenous participant from Europe said that indigenous land rights, land use and resource management were the principal issues for the indigenous peoples of Finland, Norway, the Russian Federation and Sweden. The traditional indigenous way of life includes reindeer herding, fishing, hunting

and gathering. The respective national legislations did not grant land title to the indigenous people. There was also limited legal protection against external use of traditional indigenous lands which conflicted with indigenous interests. The established official opinion in those States was still that indigenous peoples were without any rights to land and that States, in annexing those lands within their respective national boundaries, had taken possession of "ownerless land".

68. Several indigenous participants focused on the situation concerning indigenous land rights in the Russian Federation. Lack of effective implementation of indigenous land rights was said to be a general problem for most of the indigenous peoples there. Although the Russian Constitution gave indigenous peoples certain rights, including the right to land and natural resources in their own regions, without the necessary political and legal implementation measures those rights did not have much practical value for the people concerned.

69. Many indigenous participants focused on the negative effects of development activities and projects such as road construction, mining, hydroelectric plants and geothermal schemes. Two planned hydroelectric plants in the Philippines and the Pangue and RALCO hydroelectric dams in Chile were cited in this regard. The construction of the Pangue hydroelectric dam in the Bio-Bio region and the RALCO project were said to be threatening the existence of the Mapuche Pehuenche communities. The establishment of the RALCO project, run by the Chilean National Electricity Company ENDESA, will flood approximately 3,400 hectares of Mapuche territory and 700 indigenous families will have to face displacement. Some indigenous representatives said that governmental policies and programmes often gave no consideration to the long-term consequences which indigenous peoples had to face.

70. The observer for Chile stated that the RALCO hydroelectric project had been approved by the National Corporation for the Environment after intensive study. It would be implemented in line with indigenous legislation, with full consultation, and offered opportunities for economic development.

71. Some indigenous participants said that the creation of forest reserves and game sanctuaries constituted a violation of indigenous land and resource rights. An indigenous participant from Africa said that most of the wildlife game parks in Africa were to be found in traditional Maasai lands. The parks threatened Maasai livelihoods, social structures, and thereby their very existence. An indigenous participant from Asia identified Government-sponsored programmes of non-indigenous settlement on traditional indigenous lands as the core problem in his region. Another indigenous participant from Asia said that some indigenous peoples in the forests were facing enormous difficulties because the ecological balance was being destroyed by development projects. He also said that material development had never been a problem for indigenous peoples as they adjusted their lives to the environment and used the natural products and resources without destroying the environment. It was noted that uneven development had created more social and political gaps between the mainstream and indigenous peoples.

72. An indigenous participant from Greenland informed the Working Group about an ongoing study on the possible storage of nuclear materials on traditional indigenous lands in Greenland.

73. An indigenous participant from Australia stated that the Government had prepared a legislative response to the Wik decision based on the Prime Minister's 10-point plan. The plan was not a product of negotiations with indigenous peoples. He informed the Working Group about draft legislation to amend the Native Title Act, which would be presented to Parliament later this year. He expressed the view that the legislation, if passed, would lead to widespread extinguishment of native title, removal of indigenous peoples' right to negotiate over areas, including pastoral leases, and in general reduce the ability of native title holders to protect and benefit from their title.

74. The Special Rapporteur on indigenous land rights was invited by indigenous representatives to visit Australia and Canada. She thanked the participants and stated that the dates for her visit would be fixed after the relevant consultations.

C. Health

75. The observer for Canada said that an important component of the Government's strategy in the health sector was increased community control of indigenous health programmes. Twenty-five per cent of Aboriginal Community Health Contributions had been transferred to communities, and 65 percent of First Nations were involved in the transfer process. All those initiatives were being undertaken within a time-frame determined in consultation with First Nations and Inuit people. In May 1997, Health Canada's Guidelines for Federal Self-Government Negotiators were approved. Negotiators can table the Guidelines at the outset of discussions with First Nations, Inuit and provinces/territories, to set the stage for more detailed negotiations on health service arrangements. Health Canada's primary interest was to increase jurisdiction and authority by indigenous peoples over their health systems, thereby respecting the indigenous approach to health and healing, while ensuring compatibility with other jurisdictions and maintaining access to mandatory health programmes and services.

76. The observer for Canada also reported that in the Yukon, transfer of all health service delivery from the federal to the territorial government was completed on 1 April 1997. The Canadian National Forum on Health had recommended the establishment of an Aboriginal Health Institute. Moreover, training of additional indigenous health workers was an important part of the ongoing process of transferring authority and increasing autonomy, as indigenous peoples were best able to integrate cultural and linguistic aspects into the planning of programmes.

77. The observer for Australia said that the problems in health, housing, education and employment facing Australia's indigenous peoples were not easy to solve. Indigenous health was a matter of grave concern, and the Government was committed to improving the health of Aboriginal and Torres Strait Islander peoples. The Government was targeting health, housing and education as priorities. The total federal funding for indigenous health will be $127 million in 1997/98, of which $5.25 million will provide access to primary health care for 35 additional communities. Moreover, $20 million had been set aside for the Aboriginal and Torres Strait Islander mental health action plan,

which will improve training of indigenous health and mental health workers and provide accessible and appropriate specialist mental health and clinical care services to Aboriginal and Torres Strait Islander peoples.

78. The observer for New Zealand said that although there had been developments in the area of Maori health in the past three years, Maori health continued to lag behind that of non-Maori. He identified certain developments pertaining to Maori health, including increased Maori participation in the provision of health services, identification of specific resources for Maori health development, further integration of culturally appropriate practices in the health sector, a framework for the improvement of Maori health, and a focus on health promotion and prevention strategies.

79. The Committee on Indigenous Health of the Indigenous People's Preparatory Meeting presented the following joint statement and recommendations:

> "(1) The Working Group on Indigenous Populations should continue to address indigenous peoples' health as a priority issue by maintaining it on the agenda of the Working Group on Indigenous Populations; (2) The Working Group on Indigenous Populations should make recommendations to the World Health Organization and other global agencies to engage in consultation and direct dialogue with indigenous peoples to formulate a plan of action with their participants: (a) to identify and prioritize the health issues and needs of indigenous peoples; (b) to examine existing policies and determine whether the needs of indigenous peoples are being adequately addressed; (c) to develop and implement programmes and policies that adequately and appropriately address the present health crises and future health needs of indigenous peoples; (3) Indigenous peoples should participate in discussions and formulate policy with the relevant United Nations programmes, agencies and units, inter alia World Health Organization, Convention on Biological Diversity, Food and Agriculture Organization, World Intellectual Property Organization, United Nations Environment Programme, United Nations Educational, Scientific and Cultural Organization and World Trade Organization, to facilitate and guarantee protection and enhancement, while combating exploitation of indigenous medicines, food, practices, systems and institutions; (4) The principles in the draft declaration on the rights of indigenous peoples should provide minimum standards as the basis for guidelines for these recommendations."

80. An indigenous participant from Australia spoke about the cruel, inhuman and degrading treatment that indigenous people very often suffered whilst in police custody or prison. Indigenous custodial deaths in Australia had reached a new record level: indigenous prisoners were dying at twice the rate of other prisoners.

81. An indigenous participant from Asia focused on the health situation of the Adivasi people in India. About 30 per cent of the Adivasi were suffering from ill-health and nearly 44 per cent of Adivasi children are suffering from malnutrition.

82. A Maori participant said that although there had been some decline in death rates for Maori, there were major causes for concern in areas such as sudden infant death syndrome and youth suicide. Furthermore, cancer still remained the leading cause of death and illness amongst Maori. Funding of Maori health services had not been increased by the Government for the past three years.

83. An indigenous participant from Africa reported on the poor health conditions of indigenous peoples. Indigenous peoples hardly had access to adequate medical treatment, due to a badly organized public health service. An indigenous representative from Canada reported that suicide rates among indigenous youth were four to six times higher than among non-indigenous people.

84. Some indigenous participants said that their traditional medical knowledge and plants were threatened because their lands and territories were being destroyed by farming and other development activities. Some indigenous representatives also said that the health situation of indigenous peoples was linked to the environment in which they lived. The close relationship indigenous peoples had with their traditional lands should always be taken into account when considering their health situation.

IV. STUDY ON TREATIES, AGREEMENTS AND OTHER CONSTRUCTIVE ARRANGEMENTS BETWEEN STATES AND INDIGENOUS POPULATIONS

85. The Chairperson-Rapporteur, in introducing agenda item 6 entitled "Consideration of the third progress and final reports of the Special Rapporteur of the Sub-Commission on treaties, agreements and other constructive arrangements between States and indigenous populations", thanked and warmly congratulated the Special Rapporteur and invited Mr. Alfonso Martínez to present his reports.

86. The Special Rapporteur regretted having to inform the Working Group that owing to reasons beyond his control, he had been unable to present the last part of the study to the Working Group at its fifteenth session. He explained that the Commission on Human Rights, in its decision 1996/109, had asked the Special Rapporteur to include in the study a concrete example of implementation of a treaty concluded between an indigenous population and a State. He had approached the Government of New Zealand to express his interest in learning further about the Treaty of Waitangi, especially its contemporary significance. The Government of New Zealand had invited the Special Rapporteur to visit the country but, due to internal political reasons, namely elections and the establishment of a new Government, the Special Rapporteur was only able to visit New Zealand in May 1997. Consequently, there was not enough time to meet the deadline for submission of documents for the Sub-Commission. The information that he had gathered in New Zealand nevertheless merited deep consideration. The Special Rapporteur also remarked that at the 1996 session of the Working Group there had been almost no discussion of his third progress report. He therefore thought it helpful to provide an opportunity to discuss the report at the fifteenth session. The Special Rapporteur concluded by saying that he would complete and submit the study by the end of 1997 so it could be fully discussed at the Working Group's next session.

87. Mr. Guissé expressed his appreciation of and support for the work of Mr. Alfonso Martínez and emphasized the importance of including in the report the widest possible number of examples, even if this might imply an extension of the deadline.

88. Although some indigenous participants expressed disappointment about the fact that the report was not presented at the fifteenth session of the Working Group as expected, many underlined the significance of the study on treaties and expressed their hope that the report would be given the highest priority and would be ready by the end of 1997. The view was also expressed that treaties remained one of the best means of achieving equitable relationships between indigenous peoples and States. It was also essential to ensure that treaties were respected and implemented.

89. Some indigenous participants made specific suggestions. One was to review the status of the treaties made with indigenous people in order to express an opinion on whether those treaties were intended to be domestic arrangements or, rather, binding agreements between the parties. Another comment referred to the possibility of making some form of recommendation concerning whether it was fair for one party to unilaterally alter the obligations created by a treaty and, in the affirmative, what remedies could be considered to re-establish the original relationship. The Special Rapporteur was asked to consider whether Governments should be requested to consider reviewing their attitudes to treaties with a view to negotiating with the appropriate indigenous peoples practical steps that could be taken to put the parties to the treaties on an equal footing.

90. An indigenous participant from North America recommended to the Special Rapporteur that he monitor specific cases over the next five years and report on a yearly basis on the status of their implementation. The speaker also suggested that a body within the United Nations be established in order to report on a yearly basis about treaty violations.

91. In order for the final report to be as complete and detailed as possible, many indigenous organizations offered assistance to the Special Rapporteur and provided him with relevant documentation. In particular, an indigenous participant from South America informed the Special Rapporteur about the outcome of research his organization had been working on for three years, which resulted in the identification of seven important treaties between the Mapuche Nation and pre-independence and post-independence authorities in Chile, three of which had been translated and sent to the Special Rapporteur. Some indigenous participants also invited the Special Rapporteur to visit their territories in order to provide him with a better understanding of the local situation, thus facilitating his mandate.

92. The Special Rapporteur, taking into consideration the commitment and the expectations of most indigenous organizations, reiterated his apologies for the delay in the presentation of his final report. He had taken note of all the suggestions made and expressed particular interest in the proposal concerning the creation of a permanent forum to monitor and report on treaty violations.

V. INTERNATIONAL DECADE OF THE WORLD'S INDIGENOUS PEOPLE

93. The Chairperson-Rapporteur introduced item 7 entitled "International Decade of the World's Indigenous People" and invited Ms. Tove Petersen, member of the Advisory Group for the Voluntary Fund for the International Decade of the World's Indigenous People, to take the floor.

94. Ms. Petersen reported on the activities of the Advisory Group which met in Geneva in April 1997. In connection with the fellowships, the group considered it extremely important that each chosen fellow be able to share his or her experience with his or her community. Approximately 60 applications had been received, and she particularly encouraged women to apply in the future. The lack of funds allowed only a limited number of indigenous projects to be approved.

95. An indigenous participant from Northern Europe stated that the Decade offered an opportunity to establish an international framework for the recognition and safeguarding of the right of indigenous peoples to self-determination. In particular, the speaker, supported by other organizations, identified three priorities to be achieved during the Decade: the adoption of the draft United Nations declaration on the rights of indigenous peoples; the establishment of a permanent forum at the highest possible level within the United Nations system; and the establishment of networks to activate, increase and safeguard indigenous women's participation in political decision-making.

96. The observer for Canada said that his country was supporting the translation of the draft declaration on the rights of indigenous peoples into two Aboriginal languages as well as a "plain language" version of the document, in cooperation with the Inuit Circumpolar Conference in Canada and the Chiefs of Ontario. Canada had held regular discussions on the draft declaration with Aboriginal representatives. Also, a special exhibition on Aboriginal people today was being prepared for Canada's pavilion at Expo '98 in Portugal.

97. An indigenous participant from Australia, although noticing a significant slowing down of activity in this regard, reported on the development of an information kit on the draft declaration which, launched in September 1996, was currently available on the Internet and consisted of a plain language version of the document, a textual analysis, and information on the experience of indigenous peoples in the United Nations.

98. An indigenous participant from Latin America reported on information and communication activities. In particular, in August 1996, indigenous peoples, together with a Danish non-governmental organization, had organized the first meeting of indigenous peoples from the Americas. The meeting, "Abya Yala Visions", which was held in Copenhagen, was attended by more than 70 indigenous representatives from the Americas as well as representatives from the United Nations, the European Union, the ILO and others. The speaker also announced the opening of an international centre, supported by the Ayuntamiento de Vitoria-Gasteiz (País Vasco), which is meant to provide indigenous peoples with information and documentation, and gave some

information concerning the project Inkarri, aiming at providing indigenous peoples with their own site on the Internet. Finally, the speaker reported on the workshop for indigenous journalists, held in Madrid in the summer of 1996.

99. Some indigenous participants from the Russian Federation reported on activities carried out in the field of education. Despite the commitment of the Russian Federation, a slowing down of activities was reported, perhaps due to the financial crisis affecting the area. Concerns were also expressed regarding the possibility of a decreasing interest in the Decade on the part of the Centre for Human Rights as a result of the restructuring of the Centre itself.

100. The observer for Estonia made a short statement about the programmes adopted by the Government on the occasion of the Decade but regretted that a serious lack of funds had forced it to limit the number of activities.

101. An indigenous participant from North America, supported by other organizations, while acknowledging the establishment of the Voluntary Fund, lamented a lack of interest in the Decade on the part of both the United Nations and its Member States. An indigenous participant from Asia said that raising awareness in Asia had not yet been successful and proposed that the Working Group hold a formal meeting in Asia before the end of the Decade.

102. An indigenous participant from South America reported on some activities carried on in the field of indigenous rights and human rights: seminars and workshops had been organized and a number of publications had been distributed with a view to improving understanding of international legal instruments regarding indigenous peoples and monitoring their implementation. The speaker also suggested that a permanent human rights office be established in the Aymara territory of Janq'uchullpa (Bolivia, Chile and Peru) and, like many others, asked for stronger financial and technical support from the United Nations and its Member States.

103. Some indigenous participants from North America expressed concern about the environment and disappointment regarding the lack of implementation of the commitments made at the Rio de Janeiro Summit, and invited the indigenous peoples of the world as well as Member States to promote sustainable development.

104. The observer for Japan, although expressing appreciation for the development of the activities of the Voluntary Fund and commending the efforts made by the Advisory Group, asked for more transparency and for easier access to information concerning the Fund, especially with regard to its financial situation. The speaker also stressed the importance of better management for developing more activities and attracting more donations.

105. An indigenous participant from Northern Europe made a statement on behalf of several organizations about the drafting of some preliminary global guidelines on the working policies, practices and directives of transnational corporations operating in indigenous areas. The guidelines included several aspects: prior informed consent and consultation with indigenous peoples;

written agreements; compensation; monitoring and recourse; transparency; full application of corporate environmental policies. The speaker also asked for financial support from the High Commissioner/Centre for Human Rights in order to develop, adopt and implement the guidelines by the year 2000. The guidelines are contained in the annex to the present report.

106. An indigenous participant from Asia proposed revising existing policies to allow indigenous people to play a more active role in the management and implementation of activities affecting them. In particular, the speaker focused on: the development of assistance/aid through the organizations of the indigenous peoples themselves; the promotion of permanent forums for interreligious dialogue at national and international levels with the full participation of indigenous peoples; close cooperation and coordination with United Nations bodies and funding agencies.

107. An indigenous representative from Africa gave some information about research activities on indigenous and ethnic communities in Africa and asked the United Nations to call for a second African international conference in order to allow the different tribes, ethnic groups, indigenous communities, and cultural and social groups to determine the basis of their coexistence. Another speaker from the same region stated that the Voluntary Fund should be shared equally and insisted that indigenous representatives have access to the management committee.

108. Mr. Guissé expressed the view that the Decade should be seen as the framework within which to define indigenous issues clearly, in order to identify the goals to be attained and avoid confusion with other matters

VI. CONSIDERATION OF A PERMANENT FORUM FOR INDIGENOUS PEOPLE

109. The Chairperson-Rapporteur introduced item 8 entitled "Consideration of a permanent forum for indigenous people", and referred in particular to the second workshop on a permanent forum for indigenous people held in Santiago from 30 June to 2 July 1997. The workshop had been a great success with a debate at a high level. Detailed and substantive proposals had been made and a broad consensus was registered in favour of the establishment of the permanent forum. There also seemed to be agreement on some major elements such as the level within the United Nations system at which the forum would be situated and the broadening of the mandate with a view to covering all issues including development, environment, health and education as well as human rights. Furthermore, the proposal was sufficiently established for details to be elaborated by the Commission on Human Rights and the Economic and Social Council. Finally, Ms. Daes expressed the view that the United Nations reform could and should include in a concrete way a forum in which indigenous people could take up issues of concern.

110. The observer for Chile, on behalf of the Chairman of the workshop, stated that the meeting was well attended and had achieved broad agreement on some of the key matters. There appeared to be consensus that the proposed forum should have a wide mandate and that the principle of full participation of indigenous peoples in the permanent forum was essential to its success. The view was expressed that the forum should be established at the highest

level in the United Nations system, and most appropriately under ECOSOC. Also, it should be funded from the United Nations regular budget. Some concerns were expressed about the risk of a duplication of activities with the Working Group on Indigenous Populations, hence the importance of defining the respective areas of competence.

111. Mr. Kuupik Kleist, Rapporteur of the second workshop, on behalf of the Nordic countries, including the Nordic Saami Parliaments and the Greenland Home Rule Government, reiterated that the workshop had been a success: more than 100 participants, including more than 10 United Nations bodies, organizations and specialized agencies took part, demonstrating the growing interest in the matter. In the draft report of the workshop (E/CN.4/Sub.2/AC.4/1997/CRP.1), the view was expressed that there was a clear need for a permanent forum and that its mandate should be broad. Many participants considered that the forum should be composed of an equal number of governmental and indigenous representatives, around 20 overall, both groups with the right to vote. Members, who should be nominated by their regional groups, should represent a geographical balance. Although most participants thought that the forum should be funded from the United Nations regular budget, some considered that voluntary contributions should also be made available. The forum should be established at the highest level of the United Nations system, most appropriately directly under ECOSOC.

112. The observer for China agreed on the broadening of the mandate of the forum, stressed the need for financial support, and expressed the view that the forum should be a leading and implementing organ rather than just a drafting one.

113. The observer for Mexico shared the view expressed by the observer for China and added that the forum should be composed of both indigenous and governmental representatives and that it should be established at an appropriate level within the United Nations system, possibly under the Commission on Human Rights.

114. Some indigenous participants requested clarifications regarding the draft report of the workshop and explained that, in the light of Commission on Human Rights resolution 1997/30, they had expected a final report to be presented and not just a draft. Reference was also made to the annexes which were due to be attached to the report.

115. An indigenous participant from Australia recommended that a third workshop be held within a region where the indigenous peoples had as yet only a minimum involvement in United Nations structures and processes, in order to maximize their participation. Another speaker from the same region asked the Government of Australia to make a commitment to the Working Group to convene a third workshop and possible experimental first session of a permanent forum for indigenous peoples in Australia.

116. The observer for Spain, aware of the lack of an appropriate forum for indigenous peoples to exchange views within the United Nations system, expressed her full support for the establishment, by the end of the International Decade, of a permanent forum. The forum's mandate should be

broad and one of its main functions should be the elaboration of strategies aimed at developing indigenous communities within national, regional and global policies. The forum should also coordinate and monitor the activities planned and undertaken by Governments, United Nations specialized agencies and independent experts dealing with indigenous issues. The forum should be established under ECOSOC and should consist of an equal number of representatives from Governments and indigenous communities. She referred to the Fondo para el Desarrollo de los Pueblos Indígenas de América Latina y el Caribe as a possible model. The forum should be funded from the United Nations regular budget and by voluntary contributions.

117. The observer for Switzerland warned of the risk of duplication of activities undertaken by other United Nations agencies and stressed the importance of clearly defining the areas of competence. The speaker expressed the view that the forum should be established in Geneva, within the Commission on Human Rights.

118. Many representatives of indigenous organizations agreed that the forum should be established under ECOSOC, although different opinions were expressed: one representative of an indigenous organization stated that it should be established directly under the Secretary-General; another considered that it should be under the General Assembly. As for its location, some speakers suggested Geneva, others New York.

119. There was a strong feeling among participants that the mandate of the permanent forum should be as broad as possible in order to include human rights, education, environment, health, development, cultural issues, as well as conflict prevention and resolution. The mandate should reflect indigenous traditions. The terms of reference should enable it to enact measures and sanction violations like an independent judicial tribunal, and it should be capable of taking decisions and making recommendations. An indigenous representative suggested that it could undertake a study on the effects on indigenous peoples of developments carried out on their lands by multinational companies. In order to increase awareness about indigenous issues, a proposal was made with reference to the drafting of an annual report.

120. Many indigenous participants stated that the forum should be open and accessible to every community. One said that the forum should be a forum of indigenous peoples, on indigenous peoples, run by indigenous peoples. It was therefore crucial that indigenous representation be on an equal footing with Governments. Some participants expressed the view that independent experts might represent a third component of the body. Others suggested that representatives of United Nations specialized agencies should also participate in the forum.

121. Many participants suggested that the forum be funded from the United Nations regular budget, together with voluntary contributions both from Governments and from indigenous peoples themselves.

122. Two new proposals were also made, one referring to the creation of a High Commissioner for Indigenous Peoples whose main task would be to promote, protect and monitor human, civil, social and cultural rights, in particular

the right to self-determination of indigenous peoples. An indigenous representative from North America asked that the Working Group recommend the immediate establishment of an advisory post within the Office of the Secretary-General to coordinate and strengthen the response of the United Nations on indigenous issues in the light of the establishment of a permanent forum within the United Nations.

123. Mr. Alfonso Martínez raised a number of questions relating to the establishment of a permanent forum. He was of the opinion that no hasty decision should be taken on this very complex issue. As far as its institutional nature was concerned, it was necessary to clarify whether the forum would be an executive or deliberative body with either an administrative or a monitoring function. Another important issue was the forum's relationship with the Working Group. On the composition of the forum, the speaker suggested that it might be useful if a way other than consensus were used to take decisions concerning its membership.

124. The Chairperson-Rapporteur stated that it was time the competent organs and bodies of the United Nations considered the establishment of a permanent forum. The two workshops had provided sufficient information and data concerning the mandate, membership, participation and competence of the permanent forum. It should be financed from the United Nations regular budget.

VII. OTHER MATTERS

125. The Chairperson-Rapporteur, introduced item 9 entitled "Other matters".

126. An indigenous participant from South America called for the organization of more workshops to be held in different countries all over the world. Two representatives from North and South America respectively complained about the role of the United Nations which was considered to be too weak; one of them lamented the paternalistic approach of the United Nations towards indigenous issues; the other stressed the need for the United Nations to take a more active role along with its speciliazed agencies, in particular as far as the voluntary funds were concerned.

127. The observer for the Documentation Centre for Indigenous Peoples (DoCip) described the activities of its technical secretariat and its work, in particular, its efforts to enhance communication and raise awareness through the publication of information sheets about policies and activities undertaken by governmental and non-governmental organizations in English, French, Spanish and Russian. The observer also referred to the documents listed in its homepage on the Internet.

VIII. CONCLUSIONS AND RECOMMENDATIONS

A. Standard-setting

128. The Working Group reaffirmed its view that the agenda item on standard-setting constituted a fundamental part of its mandate.

129. The Working Group welcomed the exchange of views regarding the concept of "indigenous peoples" and noted the general consensus among the participants that a definition of "indigenous peoples" at the global level was not possible at this time, and certainly not necessary for the adoption of the draft United Nations declaration on the rights of indigenous peoples.

130. The Working Group decided that at its sixteenth session it would discuss under this item of its agenda possible future standard-setting activities, in particular guidelines or codes of conduct for private sector energy and mining concerns. It therefore decided to include on the agenda of the next session a sub-item entitled "Possible future standard-setting activities, including guidelines or codes of conduct for private sector energy and mining concerns".

B. Review of developments

131. The Working Group restated its view that the agenda item on "review of developments" was a vital, positive and constructive part of its mandate. It further noted that the agenda item provided a unique opportunity internationally for indigenous peoples, Governments and United Nations bodies and specialized agencies to exchange views and information and to build understanding.

132. The Working Group expressed its gratitude to all participants for their efforts to attend and make contributions to its work. The difficulties and expenses of travel by indigenous representatives were acknowledged.

133. The Working Group also welcomed the participation of observer Governments, including several high-level representatives, their continuing involvement and the detailed information they provided to the Working Group. In this respect the Working Group warmly welcomed Senator John Herron, the Minister of Aboriginal and Torres Strait Island Affairs of Australia.

134. The Working Group expressed its appreciation to the World Health Organization for its continuing support and involvement in the issue of indigenous peoples and health both in the plenary sessions and in the informal special activities which took place outside the conference room. It also welcomed the participation of other organizations of the United Nations system in particular the International Labour Organization and their positive and constructive contributions.

135. The Working Group considered that the debate on the sub-items relating to "environment, land and sustainable development" and the working paper of the Special Rapporteur on the study on indigenous people and their relationship to land provided comprehensive information to members and participants. It was noted that there continued to be serious problems for indigenous peoples in this regard. However, certain developments described by observer governments confirmed a growing concern and commitment to resolving land issues.

136. The Working Group decided to recommend to the Sub-Commission that it invite Governments, the United Nations system, indigenous and non-governmental organizations, as well as relevant academic institutions to contribute

information concerning land rights to the Special Rapporteur on the study on indigenous people and their relationship to land prior to the sixteenth session of the Working Group.

137. The Working Group decided to highlight the issue of "indigenous peoples: education and language" at its sixteenth session with the understanding that participants can refer to general issues in their statements. In this regard it decided to encourage and invite United Nations Educational, Scientific and Cultural Organization to make its contribution both substantively and through the participation of the relevant experts and staff in the Working Group's next session.

138. The Working Group decided to reorganize the discussions under the item "Review of developments" to assist participants to focus on specific issues. Consequently, the Working Group decided to include on its agenda the following separate items: "Review of developments: general statements"; "Review of developments: indigenous peoples - education and language"; "Review of developments: health and indigenous peoples".

C. Land rights study

139. The Working Group congratulated the Special Rapporteur, Ms. Erica-Irene A. Daes, on the study on indigenous people and their relationship to land for her working paper. It also welcomed the comprehensive and constructive comments offered by participants.

140. The Working Group decided to include on its agenda a new item entitled "Study on indigenous people and their relationship to land".

D. Treaty study

141. The Working Group expressed its appreciation to the Special Rapporteur for his work on the study on treaties, agreements and other constructive arrangements between States and indigenous populations. It took note of his explanation of the reasons for not having submitted his final report before the present session and expressed the hope that the final report would be submitted before the end of 1997. It also welcomed the general comments of observer Governments and indigenous peoples, as well as their observations on the third progress report.

142. The Working Group welcomed the assistance provided to the Special Rapporteur by the Government of New Zealand and Maori organizations and individuals, and other personalities in Aotearoa/New Zealand to facilitate his visit to that country as part of the preparation of his final report.

E. International Decade of the World's Indigenous People

143. The Working Group welcomed the recommendation by the Commission on Human Rights in its resolution 1997/32 that the High Commissioner for Human Rights assume responsibility for coordination of the International Decade. It also expressed its willingness to cooperate with the Coordinator in the realization of the programme of activities of the Decade.

144. The Working Group expressed its congratulations to the Advisory Group for the Voluntary Fund for the International Decade for the work it had accomplished, for the initiatives it had taken and for the transparency of its working methods. The Working Group further urged the members of the Advisory Group and the Board of Trustees to make every effort to attend the meetings to which they are invited.

145. The Working Group expressed its appreciation to the Government of Spain for its offer to host the Workshop of Indigenous Journalists in Madrid in the early part of 1998 and recommended that the Working Group be represented.

146. The Working Group recalled the recommendation of the General Assembly in its resolution 50/157 that there be a review of the Decade in 1999 and decided to include a sub-item entitled "Preparations for the mid-point review of the Decade".

147. The Working Group welcomed the recommendation made by the Commission on Human Rights in its resolution 1997/32 that the High Commissioner/Centre for Human Rights convene a workshop for research and higher education institutions focusing on indigenous issues.

148. The Working Group expressed its continuing concern about the financial status of the voluntary funds for indigenous peoples. In this respect, it recommended to the High Commissioner when she takes up her appointment to consider holding a special fund-raising meeting with interested Permanent Missions and the members of the Advisory Group to encourage financial contributions to the voluntary funds as well as secondments of qualified staff, including indigenous persons, to assist with the work of the Office of the High Commission relating to the indigenous programme.

F. Permanent forum

149. The Working Group expressed its deep appreciation to the Government of Chile for hosting the second workshop on the permanent forum for indigenous people in the United Nations. It also congratulated the participants on the substantive discussions and the results obtained.

150. The Working Group welcomed the report of the second workshop on the permanent forum, and expressed its appreciation to Mr. Christian Mariqueia, Chairperson, and Mr. Kuupik Kleist, Rapporteur of the workshop, for bringing the report to the Working Group's attention. The Working Group endorsed the recommendation of the Santiago workshop that the Commission on Human Rights at its fifty-fourth session consider how to further the process towards the establishment of a permanent forum for indigenous people in the United Nations, inter alia through the drafting of concrete proposals to this effect and bearing in mind the possibility of submitting the matter to ECOSOC for action.

151. The Working Group decided that at its sixteenth session it would focus on the questions of the membership, participation in and mandate of a possible permanent forum, including issues such as equitable geographical distribution on the basis of where indigenous peoples live and the open and authentic representation of indigenous nations, peoples, organizations and communities.

G. Meetings and other matters

152. The Working Group welcomed the establishment by indigenous peoples of a committee on indigenous health issues for future cooperation with the Office of the High Commissioner, the Working Group and the WHO.

153. The Working Group decided to consider the following items at its sixteenth session: "Standard-setting activities"; "Review of developments: general statements"; "Indigenous peoples: education and language"; "Indigenous peoples and health - recent developments"; "Study on indigenous people and their relationship to the land"; "Study on treaties"; "International Decade of the World's Indigenous People"; "Permanent forum"; and "Other matters".

154. The Working Group expressed its gratitude to the Secretariat for the preparations for its fifteenth session and requested that an annotated agenda be prepared, as in previous years, for its sixteenth session.

155. The Working Group expressed its gratitude to the Department of Public Information, and in particular to its Director, for the valuable assistance in providing important background information and press releases concerning indigenous issues.

156. In her closing statement, the Chairperson-Rapporteur congratulated the participants on the work accomplished and reminded them that consultations among members of the Working Group would be continued during the forty-ninth session of the Sub-Commission. She reiterated her commitment to look for ways to make the sessions more fruitful. She provided participants with information relating to the Working Group: 44 observer Governments took part in the meeting together with 13 United Nations and intergovernmental organizations and 281 indigenous nations, communities, non-governmental organizations and individuals. A record attendance of 887 persons had attended.

157. As far as the substantive items were concerned, the Chairperson-Rapporteur thanked all participants for their statements on item 4 about the concept of "indigenous peoples". She encouraged participants to provide information for the working paper on indigenous peoples and their relationship to land. It would be helpful if the question of health were maintained on the agenda; she expressed her appreciation for the workshop on substance use held by Canada during the session and congratulated indigenous peoples for establishing a health committee.

158. Ms. Daes expressed her warmest thanks to the Special Rapporteur on the study on treaties. She also reiterated her interest in the final report to be submitted by the Special Rapporteur. She expressed her satisfaction at the fruitful exchange of points of view which had characterized the discussion on item 7. She hoped that Governments would provide support to the initiatives undertaken by indigenous peoples. She expressed once again her gratitude to the Government of Chile in hosting the workshop on the permanent forum and the Chairman, H.E. Ambassador Cristian Maquieira, for the excellent way in which he had conducted the deliberations of the workshop and his personal

contribution to the constructive and fruitful consideration of the different aspects of the permanent forum. She also thanked Mr. Kleist, Rapporteur of the second Workshop. Finally, she stated that the General Assembly and ECOSOC were the most appropriate organs for developing the different aspects of the permanent forum. In conclusion, she wished all participants a safe return to their homes and countries.

IX. ADOPTION OF THE REPORT OF THE WORKING GROUP ON ITS FIFTEENTH SESSION

159. The report of the Working Group on its fifteenth session was adopted on 11 August 1997.

ANNEX

Guidelines relating to transnational corporations and indigenous peoples submitted by the Indigenous Preparatory Meeting, 26-27 July 1997

PREAMBLE

Guided by the purposes and principles enshrined in the Charter of the United Nations, the Universal Declaration of Human Rights and the International Covenants on Human Rights, and with the understanding that indigenous peoples have the right to their lands, territories and resources which must be recognized and respected, and with the knowledge that transnational corporations have gained much of their power, position and profit by the exploitation of these resources, we believe that they will willingly respect the following proposed guidelines:

1. CONSENT

International Corporations should gain the free and informed consent of indigenous peoples prior to initiating or implementing development activities which directly or indirectly affect the lands, territories and resources of the peoples concerned.

2. CONSULTATION

International Corporations should consult with and directly involve indigenous communities and their representatives in all stages of planning, assessment, implementation and conclusion of proposed development activities, to ensure that their economic, social, cultural and political rights and activities are not adversely affected by the proposed development activities.

3. WRITTEN AGREEMENTS

International Corporations should negotiate and secure written agreements from the indigenous peoples concerned including, but not limited to, the implementation phases, assessed ramifications and profit sharing arrangements, prior to initiation of any development activities.

(Transnationals should be encouraged to provide financial assistance to indigenous peoples to ensure that the peoples concerned have full access to and ability to engage experts and resource persons as members of their negotiating teams, if they so desire. Such experts shall be vetted and engaged by indigenous peoples directly.)

4. COMPENSATION

International Corporations should negotiate with the indigenous communities a just and fair profit-sharing arrangement, prior to signing of any kind of agreement, and with full disclosure of the projected profit and complete development plans for the relevant project, to ensure that the peoples concerned receive an equitable profit share and/or compensation package.

5. MONITORING AND RECOURSE

International Corporations should have ongoing meetings with the indigenous peoples concerned, throughout the duration of the project, to ensure their direct role in the monitoring of all stages and effects of the project. They should provide a recourse mechanism to deal with possible disagreements over the provisions of written agreements between indigenous peoples and transnational corporations. Such a body should ensure the direct participation of the indigenous peoples concerned and give full and immediate effect to its decisions and conclusions.

6. ANOMALIES

In the case of circumstances in which problems occur which were not part of the original assessment impact report, International Corporations should make immediate restitution for life, land and/or property and other damages that may have been caused accidentally or through negligence.

7. TRANSPARENCY

Transnationals should make public, through their annual reports, the economic, environmental and social impact on the communities in which they work, data on indigenous equity participation and, where relevant, compensation packages and response times to effect compensation or restitution.

Transnationals must make transparency and public accountability a cornerstone of their public relations policies and, in particular, in all matters of their relations with indigenous peoples. This will lead to public trust in companies, their policies and their products.

All corporations should adopt environmental policies which form part of their corporate responsibility. These environmental standards should be developed in consultation with the communities affected and be rigorously applied to indigenous areas, regardless of the status of indigenous peoples within the relevant state.

8. ACCOUNTABILITY

Human rights issues are not an internal matter but a matter of concern to the entire international community. The transnationals that work in the countries where there are no internal legal frameworks and/or administrative mechanisms that are capable of enforcing and/or providing such involvement of indigenous communities should accept a constructive obligation to respect the guidelines and the fundamental human rights of indigenous peoples.

9. FINANCIAL INSTITUTIONS

All financial institutions should insist on an independent environmental assessment report prior to agreeing to funding projects. These should include:

(a) The ecological, social, cultural and economic impact on indigenous communities and peoples;

(b) Recommendations to eliminate or minimize negative impacts; and

(c) Provisions for foreclosure of loans if these recommendations are not fully implemented.

10. SUPPORT

Within the "new partnership" as adopted by the General Assembly in its resolutions, we request from the High Commissioner for Human Rights to support financially and assist us to ensure that we can develop, adopt and implement full guidelines before the year 2000.